

1 network, there is irrefutably more competition today than was  
2 the case when the rules were struck down.

3 (Gap in tape) -- that the deals cut in this environment  
4 reflect those underlying economics. That is precisely how one  
5 would expect the competitive marketplace to respond. For our  
6 part, we have fought to keep pace with these eroding economics  
7 in a number of ways. First, we have sought to extend the  
8 initial term of our series deals from an average of six to  
9 seven -- from an average of six years to an average of seven or  
10 eight years or, in certain instances, to negotiate perpetual  
11 licensing. This is intended to provide us with greater  
12 commercial protection against huge license fee increases when  
13 we seek to renew a hit show. I am sure that you are all  
14 familiar with the many millions of dollars demanded by  
15 producers for renewals of hit shows such as Friends, ER,  
16 Frazier or Roseanne.

17 Second, we have sought to revise our license deals to  
18 allow us to re-purpose or re-exhibit a program in close  
19 proximity to its initial broadcast. The goals are to advertise  
20 the increased cost of programming over a greater number of  
21 exhibitions across different platforms and to provide greater  
22 opportunity in the fractionalized viewing marketplace where the  
23 viewers find and sample (inaudible).

24 ABC's 2002-2003 schedule has consisted of a mix of three  
25 categories of programming: 1) Those that are produced entirely

1 by independent producers; 2) Those that are produced through a  
2 joint production agreement with Touchstone Television, which is  
3 owned by Disney; and 3) Those that are produced entirely by  
4 Touchstone Television. This season's shows that fall in the  
5 first category, entirely independently produced programs, have  
6 included Dragnet, NYPD Blue, The Practice, George Lopez, Drew  
7 Carey, Whose Line is it Anyway, The Mole, and Profiles From the  
8 Front Lines.

9 For next season, ABC has ordered comedy and drama pilots  
10 to go along with from independent producers, including Warner  
11 Brothers, (Inaudible) and Warner Brothers, Wonderland  
12 Production and Warner Brothers, the Tannenbaum Company and  
13 Warner Brothers, Universal Television, Jersey Television and  
14 Universal, Grant Gray Television and 20th Century Fox, Imagine  
15 Television and 20th Century Fox, and Carson (inaudible).

16 **MR. WESTEN:** Mark, we'll need to get you to wrap up.

17 **MR. PEDOWITZ:** ABC has also ordered four reality pilots  
18 from independent producers. In closing, I want to stress that  
19 the government's long-term efforts to stimulate more diversity  
20 and competition in television was achieved. The extraordinary  
21 competition and diversity in television today provides no  
22 factual or legal basis for government intervention into  
23 business relationships between networks and program producers.

24 **MR. WESTEN:** Thank you. Our second panelist is David  
25 Kissinger, president of Universal Television Productions, and

1 the former president of USA Studios programming, oversees Emmy  
2 Award winning NBC drama series, Law and Order. David.

3 **MR. KISSINGER:** Thank you. Well, I have a rather brief  
4 statement so hopefully I can help move this schedule along. I  
5 think that it's quite telling that a representative from  
6 Universal Television is here today as a spokesperson for the  
7 little guy. I think that tells you about as much about media  
8 consolidation as anything.

9 And what it really tells you, while Mark makes a, I think,  
10 very cogent case for the circumstances that were on the ground  
11 when the FINSYN rules were eliminated, one has to think back to  
12 what the opponents of abolishing the FINSYN rules warned might  
13 be the worst possible outcome. And let's think about some of  
14 the scenarios that were posed, the eradication of the  
15 independent production community. Well, that has come to pass  
16 with almost extraordinary efficiency and completeness.

17 And again, for the president of Universal Television to be  
18 on this panel representing what is remaining of that community  
19 tells you a lot about how complete that disappearance has been.

20 Now, Mark does make a very, I think, eloquent case about  
21 the diversity that is available to the viewing audience, and I  
22 don't think that anybody can be cavalier about dismissing the  
23 fact that television now does present to viewers as many  
24 choices as ever in the history of the medium. However, that  
25 does not change the fact that network broadcast is a unique

1 platform with a unique set of opportunities and obligations,  
2 and there are many people for whom that is the only available  
3 television viewing experience. There are 43 million American  
4 households that only have access to broadcast network  
5 television. And for those people the revolution in this  
6 business over the last ten years has had, I would argue, a very  
7 concrete impact.

8       It is not a coincidence that simultaneous with the  
9 elimination of the independent production community, you see  
10 the explosion of the reality programming phenomenon. That is a  
11 direct confluence of the economic pressures upon the companies  
12 that are now almost exclusively doing the programming and the  
13 shift in the creative process that has occurred as a result of  
14 this. Now, what do I mean by that? It is not, and believe me,  
15 I am not trying to demonize the executives who work in these  
16 vertically integrated companies. I am one of them. It just so  
17 happens that the vertically integrated company for which I work  
18 does not yet include a broadcast network. It does include some  
19 very powerful cable networks.

20       (End of Side B, Tape 1. Beginning of Side A, Tape 2.)

21       **MR. KISSINGER:** Create somewhat of a creative firewall  
22 between the networks and the product. The firewall no longer  
23 exists. There is now no difference in most cases between the  
24 network executives and the studio executives and that has a  
25 fundamental impact on the nature of the creative process. The

1 network executives are also under extraordinary pressure  
2 because the quarterly reports of the companies for which they  
3 work are so fundamentally influenced by the ratings of a  
4 broadcast network to get those ratings up fast.

5 And again, this is not to demonize those executives, but  
6 the reality is that that results in a quick-fix mentality.  
7 Studios, to the extent they are driven only by building value  
8 for a studio, can afford not to be thinking, and really must  
9 think on other than a quarterly basis. Networks have a  
10 different set of imperatives. And so it, at any given moment,  
11 makes more sense for a network to say, "Well, let's go with  
12 Mr. Personality because that looks like, for this week, that  
13 will result in a short-term fix." Frequently that is to the  
14 detriment of the network's long-term interest. It's certainly,  
15 I would argue, not contributing to the interest of the viewer  
16 in any objective sense.

17 And I would illustrate, Mark makes the point that cable  
18 networks have experienced enormous growth over the last ten  
19 years and that is certainly true. But there's a very good test  
20 case for the massive disparity between the strength of  
21 networks -- broadcast networks and cable networks, and that is  
22 a show that both ABC and USA are now sharing in a repurposing  
23 model called Monk.

24 Monk is a terrific show, which we at Universal Television  
25 produce, and it is in fact the highest rated series in the

1 history of basic cable. However, when it is shown on ABC on  
2 Thursday night, the most competitive night on network  
3 television, its audience is, I think, easily quadruple the size  
4 of its audience on the USA network on its very best night. So  
5 to me that simply illustrates that there is a massive  
6 discrepancy between the power of the broadcast cable platform  
7 and the cable platform.

8 Now, we at Universal Television are not advocating some  
9 extreme solution to this. We have yet to join with the  
10 proposal that would reinstitute a set aside of 25 percent of  
11 the broadcast network schedules for independently produced  
12 programming. We're still looking seriously at that, and I  
13 think it really does warrant very respectful consideration from  
14 all of us in this business who do have an obligation to try to  
15 serve the interest of the viewing public.

16 I think that's where I'll leave it.

17 **MR. WESTEN:** Thank you, David.

18 Our next panelist is Jerry Isenberg, professor, executive  
19 director of Electronic Media Programs at the USC School of  
20 Cinema TV. He's been chair of the Caucus for Producers,  
21 Writers, and Directors since 1968, and has produced over 100  
22 films and television projects.

23 **MR. ISENBERG:** I don't think I was the Chair that long.

24 **MR. WESTEN:** Since.

25 **MR. ISENBERG:** Commissioner Copps proposed an interesting

1 question, at least it's very interesting to me because it's  
2 been basically my field of study. And that is, is there a  
3 relationship between business structure and creativity? And  
4 after 30 years in this business, as a network executive at ABC,  
5 as an independent producer, as an entrepreneurial owner of  
6 product, and as a studio head, or at least a major independent  
7 studio head, my answer is unquestionably yes.

8 Business structure affects creativity. And if I can  
9 explain a little bit about why, if you look at the elements  
10 that are necessary to have a creative environment, you find out  
11 that true creativity is risky. It involves starting off on a  
12 project without knowing exactly what the end result will be.  
13 If you know the end result, you're not creating, you're  
14 executing. You can't put it on a time table. It takes time,  
15 and you don't know when it's going to come out. It is risky.  
16 It takes experimentation. It requires vision, resources, power  
17 to execute, and an environment that is free from fear because  
18 fear will just kill it. Any creativity you have and you get  
19 scared of your job or you get scared of the result, you tend to  
20 shut down.

21 Then you look at the corporate environment that we have  
22 created over these last years with the merger of virtually all  
23 media into six major companies, and Mark, you know, named all  
24 these outlets. All these outlets are owned by the same six  
25 companies. We have, I'd say, 90 percent of what's seen on

1 television to 95 percent is owned by the same six companies.  
2 There may be a lot of stations, but it's all Viacom or Disney,  
3 or whatever.

4 **MR. WESTEN:** Let me please ask the audience to hold your  
5 comments down until we reach the end of the panel.

6 **MR. ISENBERG:** I love it. Why?

7 **MR. WESTEN:** In fairness to all the panelists.

8 **MR. ISENBERG:** Okay. So what we have created is six major  
9 companies that operate on different principles than the  
10 entrepreneurial principles that govern independent production  
11 and actually the networks back in the days of Paley and  
12 Goldenson, and Sarnoff because in those days the owners were  
13 directly related, or the chief executives were directly related  
14 to the product. They had a responsibility for the product that  
15 was personal. They had to go home and explain to their wife  
16 and their friends why it was on the air. They also, as has  
17 been said earlier, recognized they had a public responsibility.  
18 That they were using the public's airwaves, which were supposed  
19 to be for the public's benefit. And somehow or other, we have  
20 now created an environment where the corporations treat the  
21 airwaves as a corporate asset for their benefit. It's  
22 completely different.

23 Secondly, today's program decision makers operate by  
24 business plans. We've just seen that there, if you look at  
25 today's New York Times, it'll reference Mark's network and the



1 classic short-term thinking that produced four nights of  
2 Millionaire and destroyed ABC for the next five years. Disney  
3 needed to run a profit, and they needed to do it fast. And  
4 Millionaire was making lots of money, so that became the way it  
5 went about.

6 In the environment where short-term profitability and  
7 short-term ratings and the immediacy of ratings is key, the  
8 program executives on the line operate from fear and they  
9 operate from short-term results. They also, as in any  
10 bureaucracy, have to protect their butts for the decisions they  
11 made because no matter what anybody thinks, every time you make  
12 a decision in this business, 70 percent of the time you're  
13 wrong. Maybe 80 percent.

14 So how does an executive protect themselves? By creating  
15 rationales they can use for their management for the decisions,  
16 proven formats. What you get by the way is imitation, because  
17 if Law and Order worked, let's do another Law and Order. If  
18 CSI works, let's do two more CSI. If reality works and it's  
19 because of sex, let's make it sexier. So it's that kind of  
20 thinking that is bureaucratic, not entrepreneurial. That's not  
21 the thinking that was in television 30 years ago. Yes, we've  
22 got a lot more programming.

23 There are three freedoms at stake when we talk about  
24 creative freedom. The first is the freedom to develop ideas or  
25 to choose ideas. The second is the freedom to choose the

1 people to execute the ideas. And the third is the freedom to  
2 execute those ideas without oversight, without, you know, the  
3 kind of invasive oversight by people who supposedly shouldn't  
4 be doing this.

5 What we have created in the removal of FINSYN and  
6 consolidation is this circumstance where the network executives  
7 have created for themselves and arrogated to themselves a level  
8 of power that is inappropriate to creativity.

9 In theory, a network executive's job is twofold. One,  
10 select from a random -- from a number of ideas, and once the  
11 ideas are selected, ensure that the ideas are executed  
12 according to the standards of the network. In theory, the  
13 producers, the writers, and the directors who have been doing  
14 this for God knows how many years -- and if you look at the  
15 average age of a network executive, it's somewhere between 25  
16 and 30, and most network executives, like I was, hope to  
17 graduate from being a network executive to being a producer --  
18 the arrogation of power into the network executive is an  
19 inverted structure. It's put power in the wrong place. So  
20 what we're getting is a destructive environment for creative  
21 people in which any form of struggle is looked on by that  
22 network, which now, most of the time owns the product, as  
23 you're now a troublemaker, you're done. So we've got a  
24 community, a creative community, operating on great levels of  
25 fear. By the way, that's not -- I'm not talking about David

1 Kelley and Dick Wolf because, you know, it's like every other  
2 business, the top five percent, they just float through all of  
3 this, but I'm talking about the great bulk.

4 So what has happened to the programming, and how is this  
5 reflected in the programming? Well, the first one I'll pick  
6 out is TV movies, which in the '70s were one of the great  
7 formats for creativity, expression, you know, great projects  
8 done. It is a dead form in free television. The audience has  
9 rejected it completely. It's rejected it completely. Most of  
10 us who make careers in this form of the business because the  
11 creativity of the medium in free television is gone. And it's  
12 gone because there's no independent production anymore.  
13 Because that's where it was.

14 And I'll tell you a short story about the Women at  
15 Brewster Place. I produced the Women at Brewster Place most of  
16 you -- some of you can remember it. It's an Oprah Winfrey  
17 miniseries that we did for ABC. And we developed it as a four  
18 hour, and Oprah was committed, and everybody loved the script,  
19 and everything was going until the ABC executive at that time  
20 said, "No. We're not going to do a four hour. We want to do a  
21 three hour." And the question obviously, why, and the answer  
22 was, "Because we don't think this subject matter can attract a  
23 big enough audience to warrant two nights." The subject matter  
24 being an African American -- a movie about five or six African  
25 American women, poor women. Because I was an independent

1 producer and I realized the economic viability of this project  
2 died with that decision, we figured out a way to shoot a fourth  
3 hour. And ABC was just beside themselves. "How can you do  
4 that? We didn't pay you enough for three." And we basically  
5 told them that the back end from the fourth hour would pay for  
6 the cost, plus. But that wasn't the real problem for ABC. The  
7 real problem for ABC was the four hours was going to exist.  
8 With Oprah being Oprah, they were going to have to look at it.  
9 And now they had to contend with it. And sure enough we made  
10 the movie. And sure enough ABC, "We like the three hour." And  
11 sure enough Oprah said, "I want the fourth hour." And ABC  
12 said, "Okay." And the show went on the air, won the week, and  
13 nearly won the year for them. It was the highest rated  
14 miniseries in the three years. And by the way, the executive  
15 in charge was fired the day after the second night. True  
16 story.

17 Had there not been the independence and the  
18 entrepreneurial ability to take the risk -- this is just a  
19 story that's endemic. Never would've happened. Some  
20 programmer would've decided and that would've been it.

21 So television movies have died in free television. They  
22 exist primarily, by the way, at HBO, which is somewhat a not  
23 level playing field because they spend \$8 or \$10 million  
24 dollars a movie.

25 Comedy series have lost the relevancy, and we haven't had

1 a major hit, major hit. I'm talking at the level of All in the  
2 Family, MASH, Cheers, maybe Friends, which is as nonrelevant as  
3 one can get -- but, and excuse me not Cheers, Friends. So we  
4 are looking at a comedy environment that now is beginning to  
5 look like it did before Cosby came on the air, an independently  
6 produced series, that says comedy is dead.

7       What is working? Reality. It's intensely exploitive.  
8 It's cheap to produce. It can be done very quickly and very  
9 fast. And what is the down side of all this is, in this  
10 environment where the executives who are creating the shows are  
11 removed from the responsibility, the public responsibility,  
12 what you're getting is a level of taste and vulgarization that  
13 makes you sometimes want to wince. So that form is for the  
14 moment flourishing out of its exploitiveness, not out of its  
15 quality.

16       The fourth form of television, we are strangely enough in  
17 almost a golden age, and that is the hour-long drama. And it's  
18 sort of a puzzle at one level to say, "Why is the hour drama so  
19 good nowadays? Why do we have so much of it? So good and  
20 everything else ain't working." And the answer is you have to  
21 look at the power structure in the hour drama. The hour  
22 drama -- producing 22 hours of good television in one year  
23 within that -- in a singular format is an act of incredible  
24 genius.

25       Bill's done it a few years and my respect for the man goes

1 on forever. He also made me an awful lot of money because I  
2 had a piece of Fame. For which I'm always indebted.

3 The ability to do that is rare and valued above everything  
4 else, which means the David Kelleys and the Dick Wolfs operate  
5 in an environment, a creative power environment, that has  
6 nothing to do with anything else. They're given incredible  
7 freedom and incredible support, and you will not see that  
8 support and freedom anywhere else in the television matrix.  
9 And that's my answer for that.

10 I'm about out of time except I wanted to make one comment  
11 about Mark's notes when he read out all those independent  
12 productions, the Warner Brothers independent production and the  
13 Fox independent production. I didn't know where those studios  
14 became independent. But if you notice, almost every one of  
15 these independents is in association with one of the six  
16 majors. Except for Carsey-Werner, there are virtually no  
17 dramatic or comedic series that are done independently. They  
18 are all in the hands, financially, which means power, of one of  
19 the six. So this illusion that there's independent production  
20 over at ABC is humorous.

21 Thank you.

22 **MR. WESTEN:** Jerry, thank you.

23 We will reserve a little time at the end for any burning  
24 rejoinders that any of the panelists may feel necessary.

25 Our fourth speaker is William Blinn, Emmy and Golden Globe

1 winning writer, helped create a number of series and projects  
2 including The Rookies, Starsky and Hutch, Roots, and Brian's  
3 Song.

4 **MR. BLINN:** Well, this is going to be fun.

5 First of all, I apologize for not wearing a tie. My  
6 personal credo for wearing a tie is that someone has to have  
7 died or I have to be nominated for award or I have to be  
8 sleeping with someone who's nominated for an award. And I  
9 checked my calendar this morning and here I am. Okay?

10 When I was a kid in high school, I was on the baseball  
11 team. I was on the baseball team because I was a pretty good  
12 hitter. I was also not a good fielder. The coach, who  
13 probably runs a network somewhere, therefore made me the  
14 catcher. The first time I was catching in a baseball game, the  
15 pitcher started off by walking the first batter on four  
16 pitches. He walked the second batter on four pitches, and the  
17 third batter came up, no outs, two men on base, three straight  
18 balls. Well, I had seen enough minor league baseball games in  
19 the town where I was raised to know that you're supposed to go  
20 out and calm the pitcher down. So I called timeout and I  
21 walked out to the mound and about halfway there I realized that  
22 I -- no one had ever told me what it is you're supposed to say  
23 to a pitcher to calm him down. So I got there with my  
24 15-year-old, leather, wizened, experienced face and looked at  
25 his 16-year-old, leathery, jaded, world-worry face, and I said

1 after a moment, "You're in a terrible mess." He said after a  
2 moment, "I know that."

3 I think that's the mind set of the room in regard to  
4 broadcast and where we stand. We are in a terrible spot. We  
5 think we know that. What we do not know, or it's difficult to  
6 ascertain, is A) can we do something about it to slow the  
7 iceberg? And if we can, what are those items that we can do?

8 The first thing I think we need to do as a community --  
9 and I don't mean those of us necessarily involved in the  
10 industry because the broadcast industry affects all of us  
11 whether we are in it or not -- is to acknowledge that in many  
12 ways we're in a place of PR denial. The mantra of competition  
13 and free enterprise and diversity is fairly well known, and I  
14 would offer you the following profile that exists. Which is a  
15 company, a big umbrella company that owns a film studio, and  
16 the film studio sells its entertainment product to a network  
17 that's also owned by the big umbrella company; and after that  
18 film entertainment has been shown on the network, its first run  
19 rerun is sold to a cable outlet that is also owned by the same  
20 umbrella company that owned the studio that owns the network.

21 This circular digestive food chain can be described in a  
22 lot of ways, but I don't happen to think that competition is  
23 one of those words that applies.

24 What Jerry addressed is that this monolithic corporate  
25 giant, or giants, tends to homogenize what gets put out because



1 it homogenizes the creators. They are confronted with  
2 something so large, with such a mind set, and they don't have  
3 to be bad guys, they can be co-opted and coerced and still have  
4 the best will in the world, but we are not developing our  
5 rebels. And when you don't develop your rebels, you don't have  
6 your rebellion, and I would offer the thought that this  
7 industry, and to some degree this nation, thrives on its own  
8 sense of rebellion and renewal.

9 I'm going to quote a few names that a lot of you in this  
10 audience are too young to remember. But I don't know where the  
11 David Suskinds are. I don't know where the Fred Coes are. I  
12 don't know where the Reginald Roses are. I don't know where  
13 the Paddy Chayefskys are. I do know where Paddy Chayefsky is.  
14 He is in his grave, screaming, "I didn't take Network far  
15 enough." And he didn't. He didn't envision people eating live  
16 grubs on television. Aren't we proud? That's where we have  
17 come to.

18 I hope at some point Jerry Isenberg can address an issue  
19 he was aware of on an ESPN program, but I'll let him deal with  
20 that when the time comes. Well, he was on the program. He  
21 just has a greater facility of the facts than I do.

22 But the fact of the matter is there was a time when this  
23 nation was not homogenized. There was a time when you traveled  
24 30 and 40 miles, the accents changed, the politics changed, the  
25 taste of the beer changed because the water changed and the

1 hops changed, and it was really a variegated kind of  
2 experience. We all know that's over with. We all know the  
3 Holiday Inns, the Marriotts, and the whole corporate thing  
4 has -- they shrunk us, and shrunk our spirit in my opinion.  
5 Certainly that has happened in television.

6 I agree with what Jerry said earlier that the hour shows  
7 are in wonderful shape creatively, but then I looked down at  
8 the top 20 last week. There were four hours of Law and Order,  
9 two hours of American Idol, and three hours of CSI Miami,  
10 Los Vegas, and Akron, Ohio wherever the hell that is. But the  
11 point is diversity isn't the number of channels. That's an  
12 electronic trick. Diversity involves viewpoints. In  
13 particular does it involve minority viewpoints and unpopular  
14 viewpoints. The names I mentioned were people who used to  
15 rattle our cage. They used to reach out through the screen,  
16 and grab us and say, "Goddamn it, look at the problem."

17 Edward R. Murrow, whose an Ed R. Murrow today? A documentary  
18 today is Barbara Walters interviewing a star and that's called  
19 news. No, it's not news.

20 I would also offer the thought, I know this is not a news  
21 issue, but while there are more hours of news available in  
22 terms of when you get home from whatever you're doing, if there  
23 happens to be a TV program on that network that night that  
24 addresses an issue, why, the news that night will address the  
25 same issue and they'll talk to the star, they'll talk to

1 somebody. And the line between news and entertainment is not  
2 blurred, it's smeared, and it's not a clean line. And I mean  
3 that in a whole number of ways.

4 There was a time around the turn of the century, when the  
5 government shook John D. Rockefeller, and as we look back on  
6 that it's offered that it's because he controlled the oil. No,  
7 it's not because he controlled the oil, it's because he  
8 controlled the oil and the railroads. He controlled the  
9 product and he controlled the method of distribution. And  
10 that's -- that's a chokehold. And there's no way -- I won't  
11 say there's no way out of it. I'm trying to find one.

12 We're in a world -- and it's been mentioned before, I  
13 won't beat this dead horse -- the logic of networks owning  
14 other networks, well, you'd have to upgrade to get it to logic.  
15 And I made a note to myself not to pick on Disney and then I  
16 thought, "What an oxymoronic phrase is 'picking on Disney.'"

17 So, and the -- in politics and in public life and a whole  
18 number of areas, we attempt -- at least we attempt to avoid  
19 conflict of interest and we even attempt to avoid the  
20 appearance of conflict of interest because we know it affects  
21 the voter, the viewer, the investor, whatever. Their faith is  
22 important to our wellbeing. Our being the nation's wellbeing  
23 in my opinion.

24 There was a program on in about half a year ago. I didn't  
25 see it so I'm not commenting about the quality of the program.

1 It could have been wonderful. Live from Baghdad detailed the  
2 presentation of CNN in their coverage of the first Gulf War.  
3 That program was produced by HBO. HBO and CNN are joined at  
4 the hip, corporately. Now again, I'm not impugning for a  
5 moment the motives of any of the people involved with it. I  
6 have no idea. I do know that in terms of appearance of  
7 conflict of interest, we've thrown that baby out without  
8 question.

9 Before the trap door under the chair opens up -- years ago  
10 a man by the name of E.E. Cummings wrote a poem called a Tongue  
11 of Wood. And the poem went like this:

12 There was a man with a tongue of wood, who essayed to  
13 sing. And in truth it was lamentable. But there were some who  
14 heard this clip-clapper of the tongue of wood and knew what it  
15 was the man wished to sing. And with that the singer was  
16 content.

17 I hope you've heard what I wish to sing.

18 **MR. WESTEN:** Thank you very much.

19 Our next speaker is Paula Silver, who is president of the  
20 creative marketing company Beyond the Box. Her latest picture  
21 being Big Fat Greek Wedding, many of you I'm sure have seen.  
22 Formally of Columbia Pictures and the Walt Disney Company.  
23 Paula.

24 **MS. SILVER:** Well, I don't think I can be as eloquent as  
25 my colleague here, Bill.

1 But what I think is really interesting here as, you know,  
2 being the person who marketed the movie My Big Fat Greek  
3 Wedding, a film that nobody would make because it was about a  
4 subject that nobody wanted to see, because who cares about  
5 Greek people? You know, they don't get ratings. They can't be  
6 tracked.

7 And so when you start looking at consolidation or  
8 deregulation, deregulation is now being placed upon us or being  
9 presented to the public as if it's something really good.  
10 You're going to get something. Well, what you're going to get  
11 is more of the same. And it's really frightening that words  
12 are being used against the public's information system and  
13 nobody's discussing it. It's not being discussed in the way  
14 that really is accessible, and access is what's really  
15 important. Television, films, it's access; it's storytelling.  
16 How are we creating the culture, and what stories are we  
17 communicating to other cultures about this society? I mean, if  
18 the import -- if the export business of the United States, the  
19 biggest one is entertainment, what messages are we sending out?  
20 What stories are we telling?

21 You know, I've had the advantage of being inside a big  
22 studio, and when I got to Sony it was actually Columbia  
23 Pictures that I was hired to be head of and then suddenly it  
24 became Sony Pictures Marketing that I was heading up. And I  
25 saw how that big mammoth or behemoth of an organization had to

1 be fed in a way that I hadn't really seen from the outside.  
2 For years before that I had worked for all of the studios, and  
3 I might also add that of the studios I worked for none -- five  
4 of them are left. And there were ten at the time, and so we're  
5 looking at really, what's really happened to the whole  
6 consolidation? There's no big freedom of opportunity for  
7 independent, creative producers and talent and directors.

8 Well, I got inside the studio and I suddenly saw that this  
9 place was one that if it was a \$35 million budget, they wanted  
10 my attention. If it was \$65 million, it was really important  
11 because then I was going to spend another \$35 million to market  
12 that motion picture and that was going to then feed the  
13 integration of that company. It was going to feed everything  
14 but television because Sony couldn't own a broadcast network.  
15 And so it might have had to have an arrangement with somebody  
16 else, but it didn't have it's own access. And you saw how  
17 everybody in the company wants to make good films, and they  
18 want to make good programming, but the pressure to be in  
19 business and to really worry about the bottom line is really  
20 upon you. And so you say, "Okay, what do you really have to  
21 pay attention to?" Well, that \$65 million movie is supposed to  
22 make you back that \$200 million box office. With the  
23 deregulation of theaters, you've got to feed the chains and  
24 have 2,000 prints. You need to have 5 or 16 in one megaplex,  
25 and so you don't really have an opportunity to nurture that

1 small film. If My Big Fat Greek Wedding hadn't been at an  
2 independent, it would have never reached box office success at  
3 \$250 million with a \$5 million initial investment because  
4 nobody would've watched that film. Nobody would've nurtured  
5 it. Nobody would've made sure that it would've stayed in  
6 theaters when it was being pushed out by the bigger companies  
7 that have deals, long-term deals.

8 And so you start asking yourself, "Well, what does this  
9 all really mean?" When I was at Disney, I began to see what it  
10 meant to be in a real vertically integrated company because we  
11 were able to exploit, as it's called, or use the assets of a  
12 company so that you thought that Disney's films permeated  
13 everyplace. You'd go to the theme park, you'd see the trailers  
14 playing in the theme park. You'd go to the Disney resorts,  
15 they'd be playing in the Disney resorts. You'd go so far as to  
16 actually create a TV show that looked as if it was news; but in  
17 fact if you looked really carefully, it was only Disney films  
18 that that were being discussed on that channel. It was a  
19 little show and then suddenly we had then -- somebody actually  
20 caught it eventually, but it was being sent out to the  
21 audiences, the film audiences, and the television audiences if  
22 it was real news. Every single show that was being discussed  
23 on this little half hour was only about Disney films. And so  
24 you say, okay, so that idea of owning so much, ABC and Disney  
25 really owning so much, meant that suddenly your characters,

1 your stars from Disney films could suddenly be on ABC, Good  
2 Morning America. They would suddenly show up on Regis and  
3 Kelly -- Cathy, at the time, now Regis and Kelly. And you  
4 could go through the entire day and have your stars there.

5 Well, as an independent, you don't have that access.  
6 Nobody's telling ABC to take your star. Nobody's taking --  
7 telling ABC to take Nia Vardalos, who may be the most brilliant  
8 creator of a movie, but she's an unknown. And so trying to get  
9 her booked for that publicity tour that everybody else is  
10 enjoying is impossible. I mean, they went so far as to say,  
11 "Well, listen. If you can promise me Tom Hanks and Rita Wilson  
12 and John Corbett, maybe we'll take Nia Vardalos. And it wasn't  
13 until the film had become a huge success that suddenly people  
14 were looking for Nia as a story.

15 And so it's really frightening to think that these  
16 conglomerates can get any more vertically integrated because it  
17 really doesn't allow for the independent talent to be seen  
18 anywhere.

19 Independent filmmakers, you talk about independent  
20 production, there isn't -- they say there are a lot of  
21 independent films. There are a lot of independent films and  
22 that's because the ability to make film is much cheaper.  
23 Everybody has a digital camera. And so if you have a camera,  
24 you can make a film. But where does it get distributed? Where  
25 do people get to see it? People make documentaries. Where are



1 they being seen? If the important stories, the white papers  
2 that used to be on NBC, are not being seen of NBC, and they're  
3 being made by independent filmmakers as documentaries, and  
4 people look at documentaries as being spinach. And then maybe  
5 it's going to be relegated to PBS, of which I was on the  
6 advisory board of PBS because I believe in public service and I  
7 believe in public engagement and I believe in the public story,  
8 and PBS being the champion of children's programming is in  
9 suddenly being pushed out of the marketplace by the  
10 conglomerate of a Paramount, which now has -- not only does it  
11 have Nickelodeon and MTV and VH1 and Nick-teens and  
12 Nick-at-Night, it's a complete consolidation so that there's no  
13 room for anybody else. All the networks have even gotten rid  
14 of their kids' programming because somebody else is doing it,  
15 right. And it's not PBS and yet PBS was the champion.

16 And so you say, "Okay, so now where do we take it?" Okay,  
17 that's been destroyed; this has been destroyed. Our culture is  
18 being destroyed. Children are being targeted now at a younger  
19 age because 'tweens have disposable income. So let's market to  
20 the 'tweens. Let's give them more and let's make them grow up  
21 sooner, make them consumers, not creators because there's a  
22 dollar line that you can maximize that way. It makes you  
23 really wonder where we're really going, what values, what  
24 public stories we're telling, what public service we're telling  
25 our kids to be part of. And where are they going to see these

1 stories? Who's going to be doing them?

2 I'm somebody who believes that television is a really  
3 powerful medium. It's the most powerful medium because it's  
4 social-economically equal. You don't have to spend \$10 to go  
5 to a movie theater to see it. But if all the stories are the  
6 same and there's no diversity, what are we talking about? The  
7 amortization of reprogramming 24 hours a day of the same show  
8 so that I can see Friends on NBC and then I can see it on MSNBC  
9 and then I can see it on another cable channel, that's not  
10 diversity to me. That's the same. It's the same share. And  
11 the viewership of cable is not there either.

12 When you go out to buy as a consumer, as a media person, I  
13 say, okay, where am I going to spend my money? Well, as an  
14 independent consultant for an independent film company, I don't  
15 have the same network dollars. We launched My Big Fat Greek  
16 Wedding with \$700,000, not \$35 million, and we had to use it  
17 and we had to use it and we had to reuse it and we had to  
18 really find ways to access public engagement in a way that the  
19 television nation -- the television stations aren't allowing us  
20 to do.

21 And so I look to see where the future is. You know, I'm  
22 the mother of three children, and I want their stories to be  
23 told and I want diversity to be told, and I thank Sandra for  
24 having me on this panel. As you see there are no -- none of my  
25 female peers are here. So where are the voices?

1           And I say that deregulation is a big, big brother opening  
2 up your doors and taking control of all of us. I wake up in  
3 the morning and I watch the news and I feel -- I go from  
4 network to network to network, to station to station to station  
5 and all the stories are the same. They're all the same. And I  
6 wonder who's reporting our news and who's talking to us.

7           And I think that Commissioner Copps, we're here to support  
8 you and however way we can get the voice out and the word out  
9 that this is not just about networks, it's about grassroots,  
10 it's about people knowing what they need to fight for. And I  
11 support you.

12           **MR. WESTEN:** Our next panelist, John Taplin, is also an  
13 award winning film and television producer, and currently chair  
14 and CEO of Entertainer, the pioneer in on-demand video and  
15 entertainment. John.

16           **MR. TAPLIN:** Thanks.

17           Like Jerry Isenberg, I started my career in the golden age  
18 of the independent production company, producing films for  
19 Marty Scorsese in the 70's. And I think I'm here because I  
20 know what media consolidation and vertical integration feel  
21 like to a small company.

22           For the last six years, along with a group of talented  
23 engineers, I built the first video-on-demand company called  
24 Entertainer. We had as shareholders three of the largest media  
25 companies in the world, AOL/Time Warner, Sony and Vivendi

1 Universal. Some of these shareholders had board observer seats  
2 and all of them had access to our most secret documents,  
3 architecture, and business plans. For the first three years of  
4 our life they gladly supplied us with thousands of films from  
5 our service -- for our service while we slowly built and market  
6 tested our software and security systems. But literally on the  
7 day we deployed the service nationally, everything changed.  
8 They cut off our film supply and almost immediately began to  
9 plan their own competing service, Movie Link, hiring away our  
10 most crucial software architects and doing everything possible  
11 to destroy our company.

12 When I was first starting the company, one executive from  
13 a movie company said to me, "You don't think the studios are  
14 going to let you create another HBO, do you?" Well, maybe I  
15 was naïve, but I said yes. And anybody who wants to know what  
16 the effects of vertical integration can have on a small  
17 company, I welcome them to look at our lawsuit.

18 So I guess the real question here is: Is there a role for  
19 smaller independent media companies in the American system?

20 When I started in this business there were many, many  
21 small production companies, and now there are six companies  
22 that seem to totally control all the media. Chairman Powell  
23 has had a survey done which, Professor, you referred to, which  
24 somehow has convinced him that there was tremendous diversity  
25 voices in the American media universe despite consolidation.

1 And so he seems determined this June to remove any remaining  
2 caps on the media ownership rules that have served us very well  
3 for half a century.

4 Well, I've done my own little survey and I'd like to share  
5 it with you. It's centered on the radio system because I think  
6 that gives us an insight of what TV will look like in a few  
7 years.

8 Bill Blinn talked about a time when there was regional  
9 diversity and because I work for Bob Dylan in the 60's, I can  
10 tell you that there was a time when radio was different in  
11 New Orleans than in Baltimore and that isn't anymore. Doesn't  
12 exist.

13 But moreover, I have a friend who lives in Eugene, Oregon,  
14 which is a nice, average sized, American town; and in that town  
15 there are two talk radio stations. One owned by Clear Channel,  
16 one owned by Cumulus. Two weeks ago he did a survey of the  
17 political bias of those two stations and this is what he found:

18 Between these two stations there are 80 hours per week,  
19 more than 4,000 hours per year, programmed for Republican and  
20 conservative hosts of political talk radio, and not so much as  
21 one second program for Democratic or liberal media.

22 Political opinions expressed on talk radio today are  
23 approaching the level of uniformity that would normally be  
24 achieved only in a totalitarian society. There's nothing fair,  
25 balanced, or democratic about it.

1           So how did we get to this point? I believe it was a very  
2 brilliant strategy planned by Newt Gingrich and the Republican  
3 right in the early '80s with major allies in the media  
4 business.

5           Step one was to get rid of the Fairness Doctrine.  
6 Understanding television's power to manufacture consent, the  
7 FCC took the view in 1949 that station licensees were public  
8 trustees, and as such had an obligation to afford reasonable  
9 opportunity for discussion of contrasting points of view on  
10 controversial issues of public importance. The policy of the  
11 FCC that became known as the Fairness Doctrine was an attempt  
12 to assure that all coverage by controversial issues by  
13 broadcast stations be balanced and fair.

14          For 30 years that system served our democracy well and as  
15 late as 1979 the FCC asserted that fairness was quote, "The  
16 sine qua non for renewing broadcast licenses," unquote.

17          The position of the FCC dramatically changed when  
18 President Regan appointed Mark Fowler as Chairman in 1981. As  
19 FCC Chairman, Fowler, with the Republican majority, made clear  
20 his opinion that quote, "The perception of broadcasters as  
21 community trustees should be replaced by a view of broadcasters  
22 as marketplace participants," unquote. With Gingrich and  
23 company pushing hard and the Republican FCC they were able to  
24 eliminate the Fairness Doctrine in 1987, and then everything  
25 changed.

1           Step two was to remove the media ownership camps.  
2           Gingrich had two allies, Clear Channel and News Corp., who had  
3           very clear needs at that level. News Corp. had been ordered to  
4           sell the New York Post because of media cross-ownership rules  
5           and Clear Channel needed to own multiple stations in a single  
6           market in order to squeeze the local advertisers.

7           In some markets today Clear Channel owns almost all of the  
8           stations and so the advertisers have very little choice of what  
9           to buy.

10          Gingrich delivered big time by shepherding through his  
11          newly controlled Congress the Telecommunications Act of 1996,  
12          which essentially eliminated the public service obligations for  
13          local stations.

14          These two actions, killing the Fairness Doctrine and  
15          deregulating ownership rules, have led us to a situation that  
16          even Barry Diller describes as a media oligopoly. I believe  
17          that if the FCC and Congress continue to roll over for the  
18          media cartel, our democracy is in peril.

19          Two companies will own 80 percent of the nation's radio  
20          stations, five companies will own 80 percent of the nation's  
21          television broadcasting, four companies will own 80 percent of  
22          the nation's cable systems, and they will all fill these  
23          channels with content they own and exclude content they don't  
24          own, and as Bruce Springstien says it will be 57 channels and  
25          nothing on. The theater of humiliation.

1 Two vastly different ideas of what our future might look  
2 like stretch out before us. Down one road lies the founders'  
3 original conception of an independent media as a steward to our  
4 democracy. Down the other lies a world that can only be  
5 described by the word "plutocracy."

6 I believe the FCC has to postpone its June deadline to  
7 decide on the ownership-caps issue. It should then begin a  
8 comprehensive review of four issues:

9 One, would maintaining and even strengthening existing  
10 ownership (inaudible) lead to a more democratic and pluralistic  
11 media system that would restore the community trusteeship  
12 nature of broadcasting licenses?

13 Two, should the commission mandate that cable and  
14 satellite networks should also have a public service component  
15 in return for the antitrust exemption given to their owners,  
16 the major MSO's and media conglomerates?

17 Three, is there any reason not to restore the Fairness  
18 Doctrine, in order to ensure that issues of vital public  
19 importance are covered in a balanced and fair manner?

20 Four, that the commission ensure that broadband Internet  
21 providers be bound by the same common carrier statute --

22 (End of Side A, Tape 2. Beginning of Side B, Tape 2.)

23 **MR. TAPLIN:** The next four weeks is probably the most  
24 critical period in the history of the FCC. The media cartel  
25 believes the fight is already over and they have the Republican



1 votes to lift the last vestiges of regulation from their  
2 shoulders. You should understand that the Fox News motto of  
3 fair and balanced is nothing but a very unsubtle attempt to  
4 mock the commission's impotence in the face of the power of  
5 money.

6 Ninety years ago, as he pushed for antitrust reform,  
7 Woodrow Wilson said quote, "The government which was designed  
8 for the people has gone into the hands of the corporate bosses,  
9 the special interests. An invisible empire has been set up  
10 above the forms of democracy," unquote. Let it not be said  
11 that this great commission allowed that to happen to the  
12 American media next month.

13 Thank you very much.

14 **MR. WESTEN:** Thank you, John.

15 Our next panelist is Darrell Hunt, professor of Race,  
16 Media, and Cultural Studies at UCLA; director of UCLA's Center  
17 for African American Studies, and he researches representation  
18 of African Americans in primetime television. Darrell --  
19 Darnell, I'm sorry.

20 **MR. HUNT:** Thank you.

21 Technology. Can you hear me?

22 This may be somewhat of an adventure because I understand  
23 that my power is running low on my laptop. Didn't anticipate  
24 the delays. We'll see. If not I may have to wing it without  
25 the visuals here.

1           Okay, what I'd like to do this morning is to return to a  
2 theme that Representative Becerra introduced very early on, and  
3 that's the issue of racial and ethnic diversity. We've heard a  
4 lot of talk about diversity in terms of the types of stations,  
5 media products, and so forth and so on. But one of the things  
6 I think that certainly bears further consideration is the  
7 people themselves. I mean, who's being represented? Who is  
8 doing the representing?

9           In 1999, a newspaper article was released in the  
10 Los Angeles Times by Greg Braxton that caused quite a stir. It  
11 seemed that in the 1999 fall season on ABC, CBS, NBC, and FOX,  
12 26 new situation comedies were going to air, but it was found  
13 that not one of them had a minority in a lead role. This, of  
14 course, led to the famous NAACP lead coalition of advocacy  
15 groups, who among other things, threatened to boycott the  
16 networks if they didn't somehow amend this absence.

17           What we found, of course, in the ensuing months was a  
18 quick attempt to add minority characters to some of the shows  
19 that had been previously slated, and as further research would  
20 show a lot of those characters were quite marginal, there to  
21 basically appease the industry pressure of the period.

22           Now, the research is clear over the years about the role  
23 of diversity in network television. Early studies, of course,  
24 like the U.S. Commission on Civil Rights, late 1970's series,  
25 Window Dressing on the Set; more recent studies like the

1 African American Television Report that I worked on with the  
2 Screen Actors Guild; Primetime in Black and White, a study that  
3 was released by the UCLA Center for African American Studies  
4 last year; the Hollywood Writers' Report, released by the  
5 Writer's Guild of America; and Fall Colors, released by  
6 Children Now all point to the same troubling conclusion. And  
7 that is, people of color, largely in primetime television, are  
8 absent.

9       So let's look for a moment in front of the camera. If we  
10 look at primetime television right now, 2003, what we see is  
11 that primetime television presents a black and white world.  
12 What that means is that White Americans and African Americans,  
13 surprisingly to some people, are both over-represented in  
14 primetime. Other groups, Latinos, Asian Americans, Native  
15 Americans are virtually invisible. You don't find them.

16       I should note that for those who might see the  
17 over-representation of African Americans as positive or good  
18 news, when you start looking at the actual portrayals, when you  
19 look at the roles themselves you find that most of the roles  
20 are marginal at best; they're not your major roles; they're not  
21 your more central roles. So what you have basically, is an  
22 image of America being reflected back to itself, which is one  
23 of largely white importance and everyone else is less  
24 important.

25       Now, if we look at the minority representation gap, we

1 find it's actually increased over the last 30 years.

2       The first bar here on the graph shows you the gap between  
3 the percentage of the American public -- excuse me -- that was  
4 minority in 1970 and the actual, I guess, percentage or  
5 proportion of minority characters in primetime. There was only  
6 about a two-percent gap. Now again, these representations were  
7 by no means wonderful representations, but the gap was a lot  
8 smaller than it actually is today.

9       Indeed, by 1999 and 2001, we see the gap is about 11 to 10  
10 percentage points. Again, most of these roles are your more  
11 marginal roles.

12       Let's look behind the camera. If we look at the point  
13 guards, for using that analogy, of television shows, if we look  
14 at the show runners, we find that people of color again are  
15 woefully underrepresented among their ranks. Black show  
16 runners, for example, we found last year in our study, were  
17 relegated largely to black shows with one exception. And here,  
18 if you looked at the shows that were on television only six  
19 percent of those shows actually employed blacks as the  
20 executive producers. Ninety-four percent of shows didn't.  
21 And, of course, the shows that did were your largely black  
22 oriented situation comedies, most of which appeared on UPN.  
23 Other minorities, Latinos, Asian Americans, again were  
24 virtually invisible within the ranks of show runners on  
25 television.

1           If we look at minority TV directors, we see a similar  
2 pattern. Again, we're looking here at the top 40 shows from  
3 2000-2001. We see that only six percent of all TV directors  
4 during this period were people of color; 11 percent were women.  
5 Indeed you find that white males make up about 31 to 33 percent  
6 of the population, but they account for about 80 percent of all  
7 TV directors. So again, you have one group that largely  
8 controls how we perceive what's being presented on television  
9 through, you know, actual creation of the product itself.

10           What about the people who actually come up with the  
11 stories? Well, again, minority TV writers are also rare and  
12 again they tend to be relegated to minority shows. Again,  
13 looking at primetime 2001-2002, we find from the Writers Guild  
14 that combined, all people of color, which make up about 31  
15 percent of our population, only account for about eight percent  
16 of screenwriters. They're underrepresented by a factor of four  
17 here.

18           When we look at television, this whole question of  
19 diversity, we tend to see a very interesting historical  
20 pattern. The first thing we note is that it's largely an  
21 insular industry that's largely controlled by white males that  
22 tends to, because of the experiences that these people in  
23 control have, produce homogenized products.

24           Periodically, we see advocacy groups pressure the industry  
25 for more inclusion. Then, of course, the industry acts to

1 appease those critics as for example with the voluntary  
2 agreements that were struck between the NAACP-led coalition a  
3 few years ago in the industry. Then we enter in a period --  
4 into a period where that pressure is typically diminished, and  
5 guess what, business as usual practices typically return.

6       So what are the implications as we sit here today and  
7 think about this whole question of consolidation, consolidation  
8 of ownership? Well, of course, we can't -- I think we're all  
9 here today because we're concerned with issues of democracy.  
10 And the point I'd like to make is that democracy and diversity  
11 go hand in hand. Prohibitions against media consolidation, of  
12 course, were intended to protect the circulation of diverse  
13 view points to the American public. And that, of course, was  
14 considered to be a public good. And it was best represented in  
15 the democratic ideal of the free market, which incidentally was  
16 imagined to be composed of a multitude of small buyers and  
17 sellers.

18       I can tell you, as a sociologist who studies media and who  
19 studies the effect of media on society, that television is a  
20 key cultural forum in our society. And network television,  
21 despite its shrinking audience share, continues to serve in  
22 that role, providing us with images of who is in and who is  
23 out, what is true and what is false, who we are, who we ought  
24 to be, as well as some sense of what the nation is as a whole.

25       And when we bring in the whole issue of diversity, of

1 course, race and ethnicity still matter. They remain important  
2 markers of societal experiences. Indeed surveys and other  
3 social-scientific evidence tell us that these experiences often  
4 produce the very diverse array of perspectives and viewpoints  
5 that the founders thought of when this whole issue of public  
6 interest was being -- being conceptualized. These  
7 perspectives, of course, are key as they confront many of the  
8 issues that are before us as a nation.

9 So more consolidation without a mechanism for change, I  
10 contend, equals more of the same. Today, a handful of  
11 multinational media conglomerates control most of the nation's  
12 media. And in the last ten years network ownership of its  
13 programs has skyrocketed from about 17 percent to about 77  
14 percent today, squeezing out what few small program providers  
15 remain. As industry ownership continues to consolidate and as  
16 the handful of companies that control the market continue to  
17 vertically integrate, it becomes increasingly unclear as to  
18 what market or other mechanisms would dissolve the patterns in  
19 minority exclusion that we continue to see today.

20 In other words, in terms of racial and ethnic diversity,  
21 things are bad in primetime. More consolidation of ownership  
22 will only make them worse.

23 Thank you.

24 **MR. WESTEN:** Thank you, Darnell.

25 Our last panelist comes to us courtesy of video

1 conferencing. Martin, are you -- can you hear us all right?  
2 Great. Martin Franks is --

3 **MR. FRANKS:** I can hear you fine.

4 **MR. WESTEN:** Martin Franks is Executive Vice President of  
5 CBS Television and Senior Vice President of Viacom. And before  
6 joining CBS, he was chief of staff to Senator Patrick Leahy and  
7 executive director of the Democratic Congressional Campaign  
8 Committee. Martin.

9 **MR. FRANKS:** Thank you.

10 I would especially like to thank Commissioner Adelstein,  
11 without whom I could not have participated today.

12 The perspective I'm going to share today is shaped by 16  
13 years in the broadcast network television business, all with  
14 CBS. I am, however, a bit confused. And with apologies to  
15 Steven Sondheim, Larry Gelbart, and Zero Mostel, a funny thing  
16 happened on the way to this forum.

17 Under pressure from the U.S. Court of Appeals for the D.C.  
18 Circuit, the FCC has initiated a number of proceedings looking  
19 at its various media ownership rules. And as a result of the  
20 very specific guidance the commission has received from the  
21 Court, the FCC has asked for fresh empirical evidence to help  
22 it shape its deliberations. The FCC initiated its own  
23 research, and Viacom is part of a coalition that has submitted  
24 several additional wide-ranging and intellectually rigorous  
25 research studies. Meanwhile a number of commentators have



1 responded with decades old rhetoric, much of it only very  
2 slightly cosmetically updated from arguments that go back 30 or  
3 40 years.

4 And so now, on the way to today's forum, some very clever  
5 people have found a way to insert into the ownership  
6 proceeding, a decades old Trojan horse, the financial interest  
7 and syndication rules that the Federal court struck down a  
8 decade ago. Rules which one wag once termed a battle between  
9 the rich and the very wealthy. I salute the Coalition for  
10 Program Diversity for its cunning, but not its intellectual  
11 rigor.

12 CBS is making progress in developing secondary revenue  
13 streams, but the overwhelming preponderance of the revenue  
14 comes from our one principal line of business, selling time  
15 made available to advertisers within our programming. We  
16 invest enormous amounts in that programming in order to air the  
17 very best in news, sports, and entertainment so we will  
18 continue to be able to amass the largest possible audience to  
19 offer to advertisers.

20 To assert that CBS keeps marginal shows on the air in  
21 order to generate enough episodes to make that program viable  
22 in the syndication marketplace is ludicrous. Despite  
23 disappointing initial ratings, we do keep some marginal shows  
24 on the air and move them around the schedule, but only in  
25 search of an audience, not a syndication window. And if those

1 shows still fail to find an audience, we cancel them. Not  
2 because of their ownership, but because they are causing us to  
3 forgo advertising revenue, our lifeblood.

4 Let me state categorically, CBS does favor certain  
5 programs over others. We favor programs that garner more  
6 audience than their counterparts, whatever the production  
7 source.

8 A decade ago under Federal Court pressure, not unlike that  
9 now present in the ownership proceeding, the FCC repealed its  
10 FINSYN rules, finding that after 20 years the rules had not  
11 only failed to advance program diversity but may have actually  
12 inhibited that goal. At the same time the Justice Department  
13 withdrew its parallel consent decree independently reaching the  
14 same conclusion as the courts, that the rules did not work and  
15 were counterproductive.

16 But now like the Phoenix, FINSYN rises again in the guise  
17 of a 25 percent set aside for quote, "independent producers,"  
18 unquote. Parenthetically, should this item advance any  
19 further, I pity the poor FCC staffer charged with coming up a  
20 definition of independent that is not arbitrary or capricious.  
21 To say nothing of how one could fashion a 25 percent set aside  
22 that would meet constitutional muster when it becomes clear  
23 that such a set aside would favor one programming form over  
24 another.

25 But let me stay focused on why the revised FINSYN rules

1 simply are unwarranted. Financing primetime network television  
2 is both expensive and risky. Each episode of a primetime drama  
3 can easily exceed \$2 million. Half-hour sitcoms are only  
4 slightly less expensive, and the only guarantee is that most  
5 will fail. Fail to last long enough to recoup that investment  
6 in the syndication marketplace.

7 A writer-producer with a good idea pitches it to networks  
8 and studios alike in search of what the program-ownership  
9 debate is really all about, financing. Under the old rules  
10 networks could not compete as a bank, a source of financing for  
11 writer-producers. The old FINSYN rules made the major studios  
12 the principal source of such financing, and as collateral and  
13 to protect themselves against the huge risks inherent in  
14 television production, the studios took a percentage of the  
15 potential syndication profits. Exactly what networks are now  
16 able to do in the post-FINSYN era.

17 It is as simple as that. More sources of venture capital  
18 for writer-producers with a good idea. It is not about  
19 creative freedom; it is not about program source diversity. As  
20 noted earlier, it is a fight over which wealthy and powerful  
21 entities will get to compete as financing sources for primetime  
22 programming.

23 The networks believe that more sources of financing for  
24 that programming is beneficial. Some of our opponents would  
25 like to restrict that arena for themselves. We believe the

1 correct answer is self-evident and that is why we are  
2 bewildered that this long-ago discredited notion has crept back  
3 into the wholly unrelated ownership proceeding.

4       The proponents of the 25 percent set aside say they are  
5 doing so in the name of quote, "independent producers,"  
6 unquote. As you can see, while these parties may be  
7 independent, only insofar as they are not affiliated with a  
8 broadcast network, they certainly are not the weak, the small,  
9 or the helpless, in need of government intervention or  
10 protection. Rather they are large powerful entities, who are  
11 asking the FCC to tilt the balance of negotiating power in  
12 their favor in the marketplaces of program production, and  
13 financing.

14       In short, they would like the FCC and not the marketplace  
15 to chose winners and losers. The FCC's focus, however, must be  
16 on the public interest, in this case the viewer. The facts  
17 show that the public interest does not equal resurrection of  
18 the FINSYN rules. Programming a broadcast network is a costly  
19 and risky enterprise. Shackling the broadcast network's  
20 ability to compete in the program financing marketplace, will  
21 serve only to bolster the deep pocketed and so-called  
22 independent producers at the expense of those entities who are  
23 not.

24       As the United States Court of Appeals for the Seventh  
25 Circuit said in overturning the FINSYN rules more than --

1 excuse me-- ten years ago and I quote, "It becomes  
2 understandable why the existing producers support the financial  
3 interest and syndication rules. The rules protect these  
4 producers against new competition both from the networks and  
5 from new producers. The ranks of the outside producers of  
6 primetime programming have thinned under the regime of  
7 financial interest and syndication rules. The survivors are  
8 the beneficiaries of the thinning. They do not want the forest  
9 restored to its pristine density. They consent to have their  
10 own right to self-syndication rights curtailed as the price of  
11 a like restriction on their potential competitors, on whom it  
12 is likely to bear more heavily."

13 Please, before anyone falls for the FINSYN siren song,  
14 remember the rules are unwarranted and they will be difficult,  
15 if not impossible, to write. Particularly, with the courts  
16 that have already found the rules counterproductive ready and  
17 waiting to review any attempts to revive them.

18 Thank you.

19 **MR. WESTEN:** Thank you, Marty.

20 That concludes the presentations by our very excellent  
21 panelists.

22 Let me first ask, does any panelist have a burning  
23 addition they want to make to the discussion? If not, let me  
24 ask Commission Copps if he has any question he would like to  
25 put to this panel?